where there was a claim by a third party that the property does not belong to the defendant but belongs to him, the third party. Order 42 rule 17(b) stipulates that the court may stay execution until such time as it thinks fit. I do not see in this rule any intention for granting a permanent stay which will render the judgment ineffective or will frustrate the order of the court.

Mr. Wilson quoted *Kerpa Singh* v. *Bariam Singh*[3] where there was a bankruptcy proceeding where it was held that the creditor in accepting the tender by cashing the cheque and retaining the money must be taken to have agreed to discharge the debtor from any further liability. It must be distinguished as in that case the defendant debtor raised the issue of repayment and satisfaction in bankruptcy proceedings by seeking to set aside a bankruptcy notice. It was not by way of stay of execution but in a separate action where evidence could be taken as if it were under a fresh suit. In the instant case the defendant should file a fresh suit for a declaration that there was already satisfaction of the judgment of the court and then apply for stay of execution pending determination of the issue. This application will then be considered by the court on its merits as a stay if granted will be temporary pending the final disposal of the suit.

I therefore dismiss the motion with costs.

Motion dismissed.

Solicitors: *Wilson & Co.; Shook Lin & Bok.*

PUBLIC PROSECUTOR v. LIM WOON CHONG & ANOR.

[O.Cr.J. (Arulanandom J.) July 18, August 8-13, September 12, November 14-15, December 13, 1977, January 16-17 and March 22, 1978]

[Ipoh — Perak Criminal Trials Nos. 6 and 7 of 1977]

Criminal Law and Procedure — Charge of murder — Identification of accused — Discovery of fact as result of information given by accused — Cautioned statement of accused — Misbehaviour of accused at trial — Duty of counsel — Essential (Security Cases) Regulations, 1975 — Trial — Evidence Act, 1950, s. 27 — Criminal Procedure Code (F.M.S. Cap. 6), s. 7 — Penal Code, ss. 34 & 302.

In this case the accused were jointly charged that they committed murder of Tan Sri Koo Chong Kong, the Chief Police Officer, Perak and his driver, offences under section 302 read with section 34 of the Penal Code. At the trial the first accused was positively identified by a witness as one of the two persons involved in the killing. The evidence also showed that as a result of information by the second accused pistols and guns were discovered by the police and that expert evidence showed that the bullets which killed the Chief Police Officer and his driver were fired from the two pistols discovered. The accused had made cautioned statements in which they stated they had been instructed by an agent to assassinate the Chief Police Officer.

Held: (1) on all the evidence considered together — the first accused having been identified as one of the two persons involved in the shooting of the Chief Police Officer, the discovery of their pistols and magazines by the police as a result of information given by the second accused, the chemist's evidence that the bullets which killed the Chief Police Officer and his driver were fired from the two pistols recovered — there was only one inescapable conclusion, that it was the two accused who shot and killed the Chief Police Officer and his driver;

(2) the cautioned statements of the accused were properly taken and made voluntarily without any threat, promise or inducement and therefore they should be admitted. The cautioned statements provided all the frills and embellishments to establish motive to give details of preparations for the offence and of all attempts to prevent being apprehended and punished for their offence;

(3) when called for their defence the accused elected to say nothing and therefore the court had no option but to record convictions against them.

Cases referred to:-

(1) *Government of Malaysia* v. *Mahan Singh* [1975] 2 M.L.J. 155.

(2). *Public Prosecutor* v. *Khong Teng Khen & Anor.* [1976] 2 M.L.J. 166.

(3) *Pulukuri Kotayya* v. *King Emperor* (1946-1947) 74 I.A. 77; A.I.R. 1947 P.C. 67.

CRIMINAL TRIALS.

Abu Talib bin Othman, Senior Federal Counsel, (*Wan Abdul Majid*, Deputy Public Prosecutor, with him) for the Public Prosecutor.

Karpal Singh (subsequently discharged) for the first accused.

S.T. Lee (subsequently discharged) for the second accused.

S.P. Annamalai (subsequently discharged) for second accused.

W.E. Balasingam, amicus curiae.

Arulanandom J.: When this trial ended on the 17th day of January, 1978, I did not give my judgment immediately and I stated that as this case was of great public importance and interest I considered that I had to give a written judgment. The reason I said so was because unlike a straightforward criminal trial this had so many facets. When one uses the word 'facets' one immediately associates the word with diamonds and the sparkle and light which the many facets reflect. But unfortunately in this case it is the complete reverse for what is reflected here is not light or sparkle but darkness and evil. I shall therefore confine the first part of my judgment to dealing purely with the criminal charges and evidence before me.

The two accused were jointly charged on four charges, namely,

"First Charge:

That you jointly on the 13th day of November, 1975, at or about 12.55 p.m. at the junction of Ashby Road/Fair Park Road, in the District of Ipoh, in the State of Perak, in furtherance of the common intention of you all, did commit murder by causing the death of Tan Sri Koo Chong Kong, the Chief Police Officer, Perak, and that you have thereby committed an offence punishable under section 302 of the Penal Code read with section 34 of the said Code.

Second Charge:

That you jointly on the 13th day of November, 1975, at or about 12.55 p.m. at the junction of Ashby Road/Fair Park Road, in the District of Ipoh, in the State of Perak, in furtherance of the common intention of you all, did commit murder by causing the death of Yeong Peng Chong, Police Sergeant 5135, and that you have thereby committed an offence punishable under section 302 of the Penal Code read with section 34 of the said Code.

Third Charge:

That you jointly on the 13th day of November, 1975, at or about 1.40 p.m. in Kampong Pasir Pinji, in the District of

Ipoh, in the State of Perak, being a security area as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 148 dated 15th May, 1969 without lawful excuse and without lawful authority, did have under your control firearms to wit, (i) a Llama CAL. 7.65 pistol Sr. No. 444444; and (ii) a Llama CAL. 7.65 pistol Sr. No. 984898 and that you have thereby contravened section 57(1)(a) of the Internal Security Act No. 18 of 1960 (Revised 1972), and punishable under section 57(1) of the said Act.

Fourth Charge:

That you jointly on the 13th day of November, 1975, at or about 1.40 p.m. in Kampong Pasir Pinji, in the District of Ipoh, in the State of Perak, being a security area as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 148 dated 15th May, 1969 without lawful excuse and without lawful authority, did have under your control ammunition, to wit, 7 rounds of 7.65 ammunition, and that you have thereby contravened section 57(1)(b) of the Internal Security Act No. 18 of 1960 (Revised 1972), and punishable under section 57(1) of the said Act."

At the outset counsel for the first accused raised two preliminary objections. He stated that this was a secret trial and offended against section 7 of the Criminal Procedure Code. The court overruled the objection as members of the public were in court although it was apparent that police were taking steps for the sake of security to ensure that nobody likely to disrupt the proceedings would be free to do so. The second objection the counsel took was that the Internal Security Act No. 18 of 1960 had lapsed and that the proclamation of the emergency by the Yang di-Pertuan Agong was of no effect. He also submitted that Ordinance 1 of 1969 had also lapsed and that the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 had lapsed in view of the decision in *Government of Malaysia* v. *Mahan Singh*[1] and the case of *Public Prosecutor* v. *Khong Teng Khen & Anor.*[2] The court held that Ordinance 1 of 1969, the proclamation of the emergency and the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975 were valid.

The case for the prosecution was based on oral, direct and circumstantial evidence. While there was evidence of communist association to justify the trial of these two accused under the Internal Security Act for purposes of deciding the guilt or innocence of the accused of the charges one needs only confine oneself to the evidence relating to the charges.

The case for the prosecution was as follows. On the 13th day of November, 1975 at about 12.55 p.m. the Chief Police Officer Tan Sri Koo Chong Kong was being driven by his driver Yeong Peng Chong Police Sgt. 5135 along Ashby Road in his official car WD 729. At the junction of Ashby Road and Fair Park Road where the traffic lights were against him they stopped. When they stopped two youths on a motorcycle pulled up beside them, dismounted and opened fire at the two occupants of the car. After doing so, leaving the driver dead beside the car and the Chief Police Officer very badly wounded who was still inside the car they threw some pamphlets onto the road, then turned back to the direction from where they had come and made their escape. This was seen by a number of people but those who gave evidence before the court were: Lee Kok Wah, a sugar-cane seller (PW8); Saamsul Bahari bin Mahmud, a schoolboy (PW9), and Ramli bin Hussain, a D.I.D. Workshop Assistant (PW10).

PW8 told the court that he was selling sugar-cane water in front of the Cator Avenue School near the Fair Park-Ashby Road junction. While he was selling between 12.00 noon and 1.30 p.m. he heard the noise of a gunshot followed by four or five shots. He then turned around and saw a person squat by the side of the car and another person holding a gun and backing away towards the road leading to Fair Park. When he moved close to the side of the road there was a bang and he moved towards the direction of the car. Later he saw it was a Volvo car and he then knew it belonged to the Chief Police Officer, Perak. He then saw these two people leave on a motorcycle. He saw one of them fire a few shots at the back seat of the car through the rear side window. The other one also went to the front of the car and fired a few shots. The two then left the scene by the road near the new hospital under construction. The two persons were Chinese. They looked like students but he could not identify anyone. He also said the duration of the incident was about 4 to 5 minutes. He denied that police had coached him in any way.

Saamsul Bahari bin Mahmud (PW9), was a fourteen-year-old student and was warned about telling the truth. He testified that he was at the Sekolah Rendah Cator Avenue on that day. He remembered the shooting of the Chief Police Officer, Perak, at about 12.45 p.m. He was in the compound of the school and while he was waiting he heard shots coming from the direction of the traffic lights at the junction of Fair Park and Ashby roads. He saw two persons who were carrying pistols but he only saw one person firing in the direction of the car. The two then left on their motorcycle and he saw the registration number of the motorcycle very clearly. It was AQ 5975. He saw the whole incident from 15 to 20 yards from the two persons who were involved. The two persons were Chinese but he could not identify them.

The next witness was PW10, Ramli bin Hussain. This was a very important witness because he was the one who identified Accused No. 1 at the scene. He remembered the incident when the Chief Police Officer was shot and he told the court that at about 12.55 p.m. he had also stopped at the traffic lights at the junction. He was pillion rider of one Gopinathan. While he was waiting for lights to turn green he saw a Volvo car by his side and then a motorcycle came in between. It had a pillion rider. The motorcycle stopped and he was abreast of that pillion rider. When the lights turned green his friend proceeded on. Then there were three bangs. He turned round and he saw a person shooting towards the direction of the Volvo car and he saw the first accused. The motorcycle was in a lying position while he was firing. He and the rider of the motorcycle he was on proceeded on after the second traffic light and then stopped. He saw the first accused shooting towards the rear door of the Volvo car and the rider of the motorcycle fire at the driver's seat. After the shooting the driver came out of the motor car. Then the first accused went to the front portion of the motor car and fired at the driver. The driver then fired back and he fell

backward. Then first accused came near the driver where he was lying down. The other person stood beside the motorcycle. He lifted the motorcycle. He started the motorcycle by kicking the starter 3 or 4 times and then rode the motorcycle away. The nearest he was to them was about 28' and his view was not obstructed. He said he also saw bleeding from the forehead. Both of them were wearing school uniforms. First accused was wearing a white shirt and black long trousers and second accused was in all white shirt and long trousers. He then said he went on the 19th of January, 1977 and attended an identification parade and he identified the first accused. He could not identify the second accused. He was subjected to lengthy cross-examination and was recalled to the witness box several times but he was certain about the identification of the first accused and did not waver in any way nor was he shaken by the relentless efforts to do so by defence counsel in cross-examination including rude allegations that he was a liar and that he had been coached by police officers. The court was satisfied that he was an honest witness. In fact, because of the nature of the case, court was prompted to ask whether he was aware that by his identification of the first accused there might be reprisals against him and his family. To this he replied he was aware and in spite of that he was prepared to identify because he was sure of his identification and in the interests of the country.

Jayarajoo s/o Devarajoo (PW11) told the court that on that day he was driving motor car AU 8598. He was going towards Fair Park from the direction of Anderson Primary School. He heard gun-shots at about the time of the incident but he did not stop. The next morning at about 7.30 a.m. when he was washing the car he saw a bullet hole in the front off-side door.

From the evidence of these witnesses it was quite clear that at about 12.55 p.m. on the 13th of November, 1975 when the C.P.O. and his driver stopped at the traffic lights at the junction of Ashby Road and Fair Park Road two Chinese youths stopped beside them and fired at them at point-blank range with pistols.

The next bit of evidence was the medical evidence given by PW13 and PW14. PW13 Dr. Sharma told the court that on November 13, 1975 the late Chief Police Officer Perak was admitted to the General Hospital with a history of having been shot. His general condition was poor, bleeding quite heavily into the pharynx. He had five bullet wounds which were as follows: —

"(1) Bullet entry wound on left temporal region in front of left ear going through to right side shattering the left orbit and through the brain and lodged under the skin over the right fronto-temporal region.

(2) Another bullet entry wound over the left mandible going through the centre of the tongue through the right maxilla and the palate behind the right orbit and it was lodged under the skin over the right frontal region (question mark whether this has gone through the orbit and the brain).

(3) One bullet entry wound over the submandibular region (just below the chin) going through the right mandible shattering it into many pieces and lodged in the right mandible itself.

(4) One bullet entry wound over the left shoulder with exit wound over left mid-clavicular region.

(5) One bullet entry wound over left elbow region and exit wound over left forearm with fracture of upper 1/3 of left radius."

He was semi-conscious but he could obey commands. He was given first-aid. All necessary medical attention was given and an emergency operation was performed on him. He (PW13) extracted two bullet slugs from the skull which he handed to the police. Tan Sri Koo passed away on the 14th of November, 1975. The cause of death was extensive subdural haemorrhage in the brain and multiple gun-shot wounds over the face. The bullet wounds were such that there was no chance of survival.

The next witness was PW14 Dr. Jeyaratnam. She gave evidence that she performed a post-mortem on Yeong Peng Chong, the driver of the C.P.O.'s car, and she found the following injuries: —

"*External Post-mortem*:

(1) Entry wound 2/10" diameter with powder marks 3/4" diameter on right molar region face.

(2) Entry wound 2/10" diameter with powder marks 3/4" diameter lateral to the outer canthus of right eye.

(3) Entry wound 1/2" diameter anterior aspect of right shoulder.

(4) Entry wound 2/10" diameter with a ring of powder mark around on the anterior aspect lower end of right upper arm.

(5) Entry wound 1/2" diameter anterior aspect of left side of chest between the 4th and 5th ribs in the mid-clavicular line.

(1) Exit wound star-shaped with 3 limbs each limb 1 cm long on left parietal scalp.

(2) Exit wound 3/4" long laceration on left occipital scalp.

(3) Exit wound 1/2" laceration on the lateral aspect lower end of right side of neck.

(4) No exit wound.

(5) Exit wound 1" long on right side of back of chest between the 9th and 10th ribs 2½" lateral to spine.

Deformity with swelling right mid upper arm.

Internal Post-Mortem:

Vault of Skull:

L-shaped fracture of the right parietal bone starting around the lower third of the sagittal suture to end in the right pterion. Another fracture passes obliquely over the left parietal bone with a hole 1" diameter in the middle. The same fracture continues in a triangular shape to enter the left occipital bone with a hole 3/4" diameter 1/2" below the left occipito-parietal suture.

Base of Skull:

Comminuted fractures of the middle of the orbital plates of both frontal bones jugum sphenoidale and sella turcica. Oblique fracture extending from the fractured jugum sphenoidale over the mid cranial fossa to end in the lower end of the right petrous portion of the temporal bone. Another fracture extends longitudinally over the middle of left mid cranial fossa passing over the middle of left petrous portion of the temporal bone down to the posterior cranial fossa to enter the vault of skull at the left occipital bone.

Meninges:

Torn at the base of skull and over left cerebrum.

Brain:

Lacerations of left frontal lobe left and right temporal lobes of the cerebrum.

Thorax:

Lungs: Punctured wounds 2/10" diameter passing from the anterior to the posterior aspect of lower lobe of the right lung in an oblique direction.

Right Upper Arm:
Comminuted fracture of the middle of the right humerus.
A bullet 1/2" long ¼" diameter embedded in the triceps muscle on the posterior aspect of right upper arm was recovered."

The cause of death was shock and haemorrhage due to fracture of the skull and laceration of brain due to gun-shot wounds. There were more than one shot fired. She identified the bullet as the one she recovered and which she handed to Inspector Hassan bin Jagar (PW20). She also said that she examined a young Chinese Lim Woon Chong at the request of A.S.P. Sarain Singh (PW36) on January 6, 1977 and she found a scar tissue on mid-parietal scalp. It consisted of two scars: first on the vertex circular and 1/2" diameter; second scar tissue in front of vertex 1" long, 1/2" wide fusiform shaped longitudinally depressed 2/10" in the longitudinal direction connected to the first scar tissue by a narrow bridge 1/10" wide. She said the bullet could have grazed through the vertex of the head and caused the two scars.

It was abundantly clear from the medical evidence that both the late Tan Sri Koo and his driver died as a result of gunshot wounds. Again, from the number of bullet wounds and from the areas of the body they were found there can be no doubt that whoever fired those shots fired them intentionally with the intention of causing death or knowing for certain that it was likely to cause death.

Then you have the evidence of PW31 Ag. D.S.P. Selvaduray. He said that on December 31, 1976 he interrogated second accused in the police lock-up and spoke to him through an interpreter, Det. Cpl. 24695 Tan Yoke Lee (PW32), and he interpreted to Accused No. 2 in Chinese who said he fully understood the interpreter. According to this witness' evidence Accused No. 2 told him that he had hidden two guns and some ammunition and that he was prepared to lead him to where he had buried the guns and the ammunition. The second accused then led a police party to a small rubber-holding behind Boon Pak Park, Pasir Puteh. On arrival he pointed to a spot on the ground. Witness then gave him a changkol with which he dug once on the spot. After which PW32 continued digging the spot. After having dug to a depth of 1½ ft. Accused No. 2 pointed to an object in the hole. He then took out a plastic container sealed with asphalt. He then removed the sealed bag by breaking the asphalt with his hand and took out a plastic bag and from the plastic bag he took out two pistols and two other plastic packets. One of the plastic bags contained three magazines. The other plastic bag contained seven rounds of 7.65 live ammunition. They were kept in the bag with roasted rice. These exhibits were produced. The plastic container was *P45* and the plastic bag in which the guns were was *P46;* one Llama 7.65 pistol No. 444444 (*P47*) which was in P46; another Llama Special 7.65 pistol (*P48*) No. 984898, also from P46; the other plastic bag *P49* in which were three magazines, *P50;* another small plastic bag containing 7 rounds of 7.65 live ammunition, this is *P51;* the 7 rounds of ammunition *P52;* roasted rice in P51, *P53*. He said the two Llama pistols P47 and P48 were well-oiled and he took possession of them.

Various photographs were also produced which were taken at the scene showing the accused pointing to a spot where he had buried the exhibits and digging for the exhibits. The guns, the magazines and the ammunition were then sent to the Senior Chemist through Det. Cpl: 14493 Ismail bin Maarof (PW19).

Then we have the evidence of A.S.P. Sarain Singh (PW36) who told the court that he recorded a cautioned statement from Accused No. 1 on the 31st of December, 1976. He stated that on the 5th of January, 1977, he went to see the first accused in the Central Lock-up and on questioning the accused about certain statements he had made the accused told him he was prepared to lead him to the mining pool and the estate where he had thrown the plastic bag containing the false number plates of the motorcycle, the blood-stained clothing, the bottle of medicine and a crash helmet with a bullet hole. According to this witness accused then led him and a police party to the mining pool which was close to Kampong Pasir Pinji which is adjacent to Chung Choy Mining Kongsi. The second accused also accompanied the police party but in a different vehicle. The two accused went in different vehicles. They took two different directions but finally arrived at the same spot. The first accused directed this witness to the edge of a disused mining pool and pointed to a spot in the water about 20-30 feet away where he claimed he had thrown the plastic bag. Two divers from Woodlands on the direction of Supt. Meor Zainal Abidin (PW37) dived into the pool and within 30-40 minutes one of the divers Yahya bin Yusoh (PW33) brought out a plastic bag with some contents. About 10-15 minutes later another exhibit, a MAS bag (*P54*), was salvaged not far from the spot from where the first plastic bag was salvaged. In the plastic bag (*P55*) was a number-plate (*P21*), one white towel-type T-shirt Eagle Pagoda brand (*P57*), one white singlet (*P58*), one white short-sleeved shirt (*P59*), one Texwood purple-coloured sling bag (*P60*), one handkerchief (*P61*), pieces of newspaper (*P62*), cotton wool (*P63*), one pair of spectacles (*P64*). one empty bottle with cover (*P65*) and one bottle cover (*P66*).

First accused then led this witness to Batu Dua estate, five miles from Batu Gajah along Batu Gajah-Gopeng Road. On arrival at this estate the accused got down from the police vehicle and followed a path into the estate and after observing the vegetation there returned to the vehicle. He then led witness 100 yards further and stopped the vehicle. Accused got down from the vehicle and led witness to a very steep path which was slippery and muddy. Here witness removed one side of the handcuff. Accused then led witness to some secondary jungle which was between the edge of the estate and the trunk road where he pointed out to witness a spot in the midst of this thick undergrowth. Witness then together with his party searched this thick undergrowth. Somewhere in the midst of his undergrowth witness found a blue-coloured crash-helmet with its crown facing the sky and base partly embedded in the mud. Witness took possession of the helmet, and that is *P67*. In it he found an entry and exit hole and inside some red-coloured stains.

Then we have the evidence of Supt. Meor Zainal Abidin (PW37) who said that when he interrogated

second accused on the 5th of January, 1977, second accused agreed to lead him to the spot where he and first accused had thrown the number-plates and clothes. Witness said second accused led him and a police party to a mining pool behind Pasir Pinji. Although the police party with PW36 and first accused was in one vehicle and the party with PW37 and second accused in another and left at the same time they went in different directions but were led to the same spot by the first and second accused respectively. As a result packets *P54* and *P55* were recovered by the divers. This witness again said that on January 7, 1977, at about 2.45 p.m. second accused led him and a police party to a rubber estate along Jalan Gopeng and about 100 yards inside he stopped and pointed to a spot in the jungle at the fringe of the estate. After 10-15 minutes they recovered a crash-helmet half embedded in dead leaves.

In addition to the items collected by the police as a result of information given to them by the accused, police also recovered a few other exhibits, most important of which were the spent bullets.

PW17 Insp. Syed Nadzri said that on November 13, 1975 he examined the late C.P.O.'s official car WD 729 and he recovered 7 empty shells of 7.65 calibre, blood-stained, from the rear seat of the car. Seven empty shells were produced (P25), and he also recovered some papers written in Chinese (P17) all of which he handed to A.S.P. Maniam (PW30). On the 14th of November, 1975 he was handed two spent bullets (P23) which were also handed to A.S.P. Maniam (PW30). These two slugs were P23 which were the slugs which Dr. Sharma (PW13) recovered when he operated on the late C.P.O. and which he handed to Jaffar bin Abdul (PW28).

Again another witness, A.S.P. Maniam (PW30) told the court that on November 13, 1975 on being informed of the shooting of the C.P.O. Perak he proceeded to the scene of Ashby Road and Fair Park Road. He arrived at about 1.15 p.m. and there he found one damaged magazine with the spring falling out (P21A). He said he found it on Ashby Road about 5' away from the road divider near the traffic lights. He also recovered 8 empty 7.65 shells about 2 feet from the magazine. Eight empty shells marked *P37*. He also found one empty slug beside, *P38*. He also found 2 live rounds of 7.36 ammunition near the magazine. Two live rounds of 7.36 ammunition marked *P39*. He also found 8 documents P16 A-H on the road near the other exhibits. This witness also said that PW17 Syed Nadzri handed him 7 empty shells (P25) and 12 pieces of paper (P17). He further stated that on November 14, 1975 Insp. Hassan bin Jagar (PW20) handed him one empty slug (P24). This was the one recovered by Dr. Jeyaratnam (PW14) from the right upper arm of the C.P.O.'s driver (P24). He also further stated that on November 14, 1975 he examined a vehicle AU 8598 at Police Headquarters, Ipoh, and from the off-side front door he recovered a spent bullet (P21D). All these exhibits were sent to the Chemistry Department, Ipoh.

The Chemist Mr. Amar Singh (PW34) also gave evidence in court. He admitted receiving various exhibits from the police. He stated in his evidence that he examined the late C.P.O.'s car on November 19, 1975 and he found both glass windows on the doors on the near-side of the car and the driver's door glass window completely shattered. He also found one bullet hole on the off-side of the driver's door of the car. There was also swelling indicating attempting exit of a bullet. There was also a bullet hole on the off-side rear door of the car indicating exit of a bullet. There was also one bullet hole on the bonnet of the car towards the driver's side which was an elongated hole and indicated entry of a bullet. In the interior of the car he found three bullet holes on the white cloth cover on the rear seat rest of the car. This also indicated entry of bullets which corresponded to the bullet entry holes on the rear seat of the car. He further found one penetration hole on the interior of the off-side rear door and also found two bullet entry holes on the interior of the driver's door. He said he also recovered one distorted slug inside the driver's door. He further stated that he found blood-stains on the exterior of the near-side rear door. He found them to be Group 'O' human blood-stains.

In his evidence he went on to say that he examined P25, the seven empty shells from the back of the car, and P37, empty shells from the scene, and he found nine of them bore similar fine characteristic marks among themselves and were fired from one pistol. The other six shells bore similar fine characteristic marks and were fired from another pistol. Both pistols used were 7.65 mm pistols. He further stated that on January 5, 1977 he received from the police one semi-automatic pistol bearing the wordings Llama Gabilondoy CIA-Vitoria (Espana) Calibre 7.65 mm bearing No. 444444. It was *P47*. He also received another semi-automatic pistol bearing the wordings Llama Gabilondoy CIA-Vitoria (Espana) Calibre 7.65 mm No. 984898 (Exhibit *P48*). He also received another plastic bag in which were three magazines which were *P50*. He also received seven live rounds of ammunition stamped SBP 7.65 which was exhibit *P52*. Now these were the exhibits which the police discovered as a result of being taken to the spot where they were buried by Accused No. 2. The witness went on to say that using the pistol P47 and one of the magazines he test-fired two of the live rounds out of the seven which he received. Using pistol P48 and two of the magazines in P50 he successfully test-fired four of the live rounds from the seven he received. He also said he examined one empty slug *P38* which was found beside at the scene of the incident and one bullet P24 recovered from the driver of the car by the doctor, two bullets recovered from the skull of the C.P.O. (*P23*), two slugs recovered from the back seat of the car (*P43*), one slug recovered from inside of the driver's seat (*P44*). He found that three of these bullets, namely, P23 and P38 have been fired from the barrel of a particular 7.65 pistol since all bore same similar fine characteristic marks. The bullets P43 and P24 had been fired through the barrel of another 7.65 mm pistol since they were of same fine characteristic marks. He was of the opinion that the 7.65 mm cartridges and expended bullets had been fired from two 7.65 mm

pistols. He later compared these empty shells and slugs and these were his findings.

From Exhibit P25 7 empty shells found on the rear seat of the C.P.O.'s car and P37 the 8 empty shells recovered from the scene of the incident nine bore similar fine characteristic markings as the ones test-fired with the Llama pistol P47 and the magazines in P50 which were recovered as a result of information given to the police by Accused No. 2. And from them he was of the opinion that the nine expended cartridges in P25 and P37 were fired using the Llama pistol P47.

He next went on to say that he found six expended cartridges out of P25 and P37 which bore similar fine characteristic marks as the test-fired expended cartridges test-fired with Exhibit P48 and two of the magazines from P50. From this he was of the opinion that six expended cartridges were fired using pistol Exhibit P48. Then he went on to say that he examined the expended bullets and he found that four of them, namely, P38, an empty slug recovered from the scene of the incident, P23, the two slugs recovered from the C.P.O.'s skull and P44 recovered from the C.P.O.'s driver's door bore similar fine characteristic marks to the test-fired slugs from P47. From this he was of the opinion that the four slugs were fired using pistol P47. He also went on to say that he found two slugs P24 which was recovered from the arm of the driver, one of which was from the two slugs embedded in the rear back seat rest of the C.P.O.'s car towards the right (P43) by D.S.P. A. Selvaduray (PW31). And these were found to bear similar fine characteristic markings as the test-fired slugs from P48, one of the Llama pistols recovered as a result of information given by Accused No. 2. And from this he was of the opinion that those two slugs were fired using pistol P48.

Now, from the evidence of this witness and considering he was not cross-examined at all, it is abundantly clear that the gunshots which killed the C.P.O. and his driver were fired using the two Llama pistols P47 and P48 which were discovered by the police as a result of information given and police being led to the spot where they had been hidden by the accused. This witness further went on to say that he examined a blue soiled crash-helmet (P67) which is the one which again the police discovered as a result of being taken to the spot where it had been thrown by the first accused. He said when he examined the helmet he found it bore two holes, one almost circular penetrating hole and one regular shaped bigger hole also penetrating at the top rear of the helmet. The first hole was consistent with a bullet entry hole and the second hole consistent with bullet exit hole. He was sure they were bullet holes because he found some particles of lead there. He also said he took this crash-helmet and put it onto the head of Accused No. 1 and on putting the crash-helmet on his head he found that the helmet could not only fit him but also the direction of the elongated section as viewed from the front of the man corresponded with the direction of the straight line drawn from the entry hole to the exit hole of the helmet. This evidence together with the evidence of doctor PW14 who said: "I can't think of any other cause for the wounds" namely, the scar tissue on mid-parietal scalp consisting of two scars except bullets, and the evidence of the eye-witness Ramli bin Hussein (PW10) who said "I saw bleeding from the forehead" add weight to the prosecution case that Accused No. 1 was one of the two people involved in the killing of the C.P.O. and his driver.

Even considering this case as a case under the Criminal Procedure Code and not under the Essential (Security Cases) (Amendment) Regulations, 1975, from the evidence I have so far referred to, prosecution have adduced evidence to warrant a conviction if the evidence is not rebutted. PW10 was the only eye-witness able to identify Accused No. 1 and as I said earlier he was subjected to severe cross-examination — and if I might go further, subjected to harassment, quite unjustifiable harassment — by the defence counsel. In spite of it, his evidence was not shaken. It was suggested in cross-examination that since the others could not identify his identification was unreliable. That I cannot accept. Firstly, in the excitement of an incident like this, a dangerous incident where guns are being used, some people may honestly not be able to identify, but, again, because of the nature of this case under fear of reprisal many an innocent witness could be reluctant to identify. The fact that nobody else identified the accused does not in any way detract from the evidence of PW10. The only criticism which may be levelled at PW10 may be that he did not go to the police immediately. There again, I must take into consideration the fact that for many reasons people, not necessarily dishonest people, are reluctant to get involved in this type of cases. But, however, once he was contacted, he had been brave and given every assistance to the court. The evidence of PW10 was supported by other witnesses as to what happened on that fateful day, except that the others did not go on to identify him, but, apart from that, PW10's evidence is corroborated. There can be no doubt that the C.P.O. and his driver died of multiple gunshot wounds. The only question which arises before the court is the question of identity.

In view of the discovery of the two guns and magazines and live rounds of ammunition by the police as a result of information given and the police being led to the spot where they were buried in the ground and in view of the fact that during cross-examination of witnesses there was no suggestion that the exhibits discovered were buried by someone else and that the accused only knew where they were without actually being responsible for burying or throwing them and in view of the fact that the bullets which killed the C.P.O. and his driver were fired from these guns I have not the slightest doubt that it was the two accused who together opened fire on the C.P.O. and his driver and caused their deaths.

I will just briefly refer to what was said in the Privy Council judgment in *Pulukuri Kotayya* v. *King Emperor*[3]:

"In their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting

in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant."

Another piece of evidence which also connects the accused with the shooting of the C.P.O. and his driver is the discovery by the police of the false number plate used by the accused on their motorcycle on the afternoon of the incident. This number-plate, AQ 5975, was discovered in the mining pool to which both accused led the police to show the police where they had dumped their blood-stained clothes and the false number-plate. This was the number which PW9 said was the number of the motorcycle on which the two persons involved in the shooting of the late C.P.O. and his driver had ridden off after the incident.

On all this evidence considered together — the first accused having been identified as one of the two persons involved in the shooting of the C.P.O., the discovery of their pistols and magazines by the police as a result of information given by second accused, the chemist's evidence that the bullets which killed the C.P.O. and his driver were fired from the two pistols discovered — there is only one inescapable conclusion, that it was the two accused who shot and killed the C.P.O. and his driver.

If the prosecution had presented a structure made of wood to establish the prosecution case, the cautioned statements made by the accused cemented the structure and converted it into one of steel and concrete. While without the cautioned statements the prosecution had established the necessary ingredients of the charges to warrant convictions on all the charges the cautioned statements provided all the frills and embellishments to establish motive to give details of preparations for the offence and of all the attempts to prevent being apprehended and punished for their offence.

In their cautioned statements both of them have stated that they were instructed by an agent to assassinate the C.P.O. the late Tan Sri Koo. They were also provided with guns and ammunition. Having come to Ipoh they observed that he took the route via Ashby Road to his home every day for lunch, they waited for him on November 13, 1975 at Anderson School entrance and then followed him. When his car stopped at the traffic lights they drew alongside, jumped off their motorcycle and at point-blank range opened fire at Tan Sri Koo. The driver who tried to defend him was also mowed down. Having accomplished their mission they left and then took various steps to get rid of all possible evidence against them. The story related by them in their cautioned statements is corroborated in all the material particulars by the independent evidence adduced by the prosecution so there cannot be the slightest suspicion that it is a fanciful concocted story or put into their mouths by someone else. The cautioned statements have the ring of truth, and only the truth, however nefarious the inspiration may have been.

In the case of the first accused he was represented by counsel and although there was a statement from the Bar that his cautioned statement was not a voluntary statement, in the trial within the trial Accused No. 1 elected to say nothing nor did he wish to call evidence. In fact the evidence of the recording officer that his statement was made voluntarily was not in any way discredited during cross-examination. Similarly with the cautioned statement of second accused. The evidence of the recording officer was not rebutted and in this case again the accused elected not to say anything and not to call any evidence to try to establish that the statements were involuntary.

The court was completely satisfied that the cautioned statements were properly taken and made voluntarily without any threat, promise or inducement and therefore they were admitted.

When the defence was called accused elected to say nothing. Although original counsel had discharged themselves the court had assigned counsel to defend the two accused. The two accused consistently refused to take advantage of services of counsel and not only refused to give any instruction but also frequently hurled abuses. Several adjournments were granted to the two accused to engage counsel. They not only failed to do so but still refused to accept assigned counsel. Under the circumstances the court had no alternative but to proceed with the trial. However counsel assigned remained in court as *amicus curiae* till the close of the case at the request of this court. When defence was called accused elected not to say anything and assigned counsel was invited to make submissions about the case on their behalf as to whether the prosecution had discharged all the onus cast on them in a case of this nature. To the credit of counsel he made a very thorough and eloquent submission to assist the court in analysing the evidence and coming to a just verdict. At the end of the whole case the court is satisfied beyond reasonable doubt, considering all the evidence before it, that the two accused are guilty of the four charges which were preferred against them. The court therefore records convictions against both the accused on all the four charges.

Before I pass sentence it is incumbent on me to elaborate on why at the commencement of my judgment I said this case had many facets and I dealt in the first instance with only the evidence before me as far as the charges against the accused were concerned. But during the trial it was quite obvious that both the accused did not show any respect for the court and they made it clear that they had no respect and had no intention of showing any respect for the court. And that was given wide publicity in the press. This would normally involve proceedings for contempt of court but as everyone is fully aware contempt proceedings are for contempt of court and not of the presiding judge. Being fully conscious of this and because of the nature of the case I did not let the conduct of the accused interfere with the continuation of the trial till its completion. In considering the evidence before me I have scrupulously disregarded any question of the conduct of the accused and have weighed the evidence before me as if there were no incidents during the trial. As I had cause to state

in an earlier case if misbehaviour of accused could interfere with a trial accused persons could prevent a trial being brought to a conclusion by their own conduct. But in this case, in view of the verdict arrived at I do not propose to initiate any further proceedings against the accused. The matter may perhaps be looked into by the proper authorities to consider whether the laws for contempt of court are adequate in these type of proceedings and if inadequate whether necessary legislation should be enacted to ensure that similar conduct may be avoided in future cases.

Another aspect of the case I should comment on is the conduct of the three retained counsel in the case. In the first instance when the prosecution had almost concluded their case Mr. S.T. Lee wanted to discharge himself and even though he was told by the court to remain he walked out completely indifferent to the situation he was leaving the court in when his client was facing capital charges. This necessitated an adjournment of the case. At the next hearing another adjournment was necessitated on the application of Mr. Annamalai who was sick. Before the next hearing Mr. Karpal Singh and Mr. Annamalai discharged themselves and even after being released by the court came to court and Mr. Karpal Singh wanted to address the court. This resulted in the two accused interfering with the court on the ground that the court was preventing Mr. Karpal Singh appearing for the accused. And this resulted in further interference with the court by accused. This case which should have concluded in August 1977 was only concluded in January 1978 as a result of these machinations. Counsel discharging themselves from a case have a duty to impress upon and explain to their clients that they are doing it of their own volition and the courts have nothing to do with their decision. Conduct such as this by members of the Bar who are officers of the court to deliberately interfere and obstruct the administration of justice and the functioning of the court is not only no credit to the Bar but brings the matter of integrity of the Bar into question. And unless those responsible for the discipline and conduct of members of the Bar play a more active part in enforcing ethics, etiquette and discipline on the "black sheep" society may look to other sources for such control and this may mean a further diminishing of the credibility of the Bar. Now I proceed to the sentence.

Having convicted you on all the four charges, the only sentence I can pass on you is death.

Sentenced to death on first charge. Sentence stayed on all the other three charges.

Order accordingly.

OTHMAN BIN PAKIR MOHAMED & ANOR. v. YUSUF BIN AHMAD & ANOR.

[A.C.J. (Syed Agil Barakbah J.) February 12 & April 18, 1978]

[Alor Star — Civil Suit No. 198 of 1973]

Damages — Quantum — Liability admitted — Appeal against court's award of $15,000 — Bruises, over the cheek and chin, dislocation of 3 upper teeth and fracture of the jaws.

Damages — Jaws — Fracture — Injuries over cheek and chin — Teeth — Dislocation.

In this case an appeal was brought against the court's decision in awarding the second plaintiff general damages in the sum of $15,000 and costs against the defendants who admitted liability. The second plaintiff, aged 33, was wife of the first plaintiff, a diplomatic officer, whose claim had already been settled. As a result of the motor accident while she was a passenger in the motor-car driven by her husband she suffered multiple bruises over the cheek and chin regions, dislocation of 3 upper teeth and fracture of the upper and lower jaws. The scars on the chin were still visible and as a result of the said injuries the second plaintiff had to wear permanent denture. She had to stay away from diplomatic parties for seven or eight months as the denture had caused her some embarassment particularly while eating during parties.

Held: in the circumstances the award of $15,000 as general damages was fair and reasonable compensation. The sum included $10,000 for pain and suffering ($7,000 for fractures of the jaws and $3,000 for loss of the upper teeth), and $5,000 for loss of amenities. The element of overlapping had been borne in mind.

CIVIL SUIT.

N.T. Vello for the plaintiffs.

Kannappan Gurusami Pillai for the defendants.

Syed Agil Barakbah J.: This is an appeal against my decision in awarding general damages in the sum of $15,000 and costs for the 2nd plaintiff. Prior to the proceedings, the defendants admitted liability for the motor accident. In the course of the proceedings, settlement was reached as regards the 1st plaintiff's claim. The defendants agreed to consent judgment in the sum of $1,500, inclusive of general and special damages, be awarded to the 1st plaintiff and costs to be taxed. The action only proceeded on the claim by the 2nd plaintiff on quantum of damages. The 2nd plaintiff's claim for special damages was not proceeded with.

Mr. Vello appeared for the plaintiffs and Mr. Pillai, for the defendants. The Agreed Bundle of Documents is marked Exhibit "A" and the Statement of Agreed Facts is marked Exhibit "B".

The 2nd plaintiff, 33 years of age, is the wife of the 1st plaintiff, now serving in the Malaysian Embassy, Tokyo, Japan as Third Secretary, Protocol. During the accident on October 6, 1972, he was Vice Consul at Songkhla, Thailand. As a result of the motor accident while she was a passenger in the motor-car driven by her husband, she received the following injuries:—

(i) Multiple bruises over cheek and chin regions;

(ii) 3 of the upper teeth completely dislocated;

(iii) Fracture of the upper and lower jaws.

(See page 8 of Exhibit P1).

She was hospitalised at the District Hospital, Sg. Patani on the day of the accident, then transferred to the General Hospital, Penang, and discharged six